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15 UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF WASHINGTON

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19 IN RE APPLICATION OF ZAYN AL-  
20 ABIDIN MUHAMMAD HUSAYN  
(ABU ZUBAYDAH) and JOSEPH  
21 MARGULIES

No. 17-CV-171-JLQ

22 RESPONSE BY THE UNITED  
23 STATES TO ABU ZUBAYDAH'S  
24 MOTION FOR LEAVE TO SERVE  
25 SUBPOENAS OR, IN THE  
26 ALTERNATIVE, TO SET A  
27 HEARING DATE

28 UNITED STATES' RESPONSE TO MOTION TO SERVE SUBPOENAS

1 On June 30, 2017, the United States of America filed a statement of interest in  
2 this case explaining why the Court should deny Abu Zubaydah's application pursuant to  
3 28 U.S.C. § 1782 to serve deposition and documents subpoenas on James Mitchell and  
4 John "Bruce" Jessen. *See* ECF No. 11. Abu Zubaydah filed a response to the  
5 Government's statement on July 21 (ECF No. 16), and in the Government's view, the  
6 question of whether the subpoenas should issue is now fully briefed and ripe for a  
7 decision by the Court.  
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10 Abu Zubaydah has now filed a motion for leave to serve the requested subpoenas,  
11 arguing that the "proper course at this time is for the Court to enter an order permitting  
12 Petitioners to serve the requested subpoenas." *See* ECF No. 20 at 2-3. Abu Zubaydah  
13 further contends that if the Government has objections to the issuance of the subpoenas,  
14 those objections should be raised in a motion to quash after the subpoenas issue. *See id.*  
15 at 2. Petitioner provides no legal support for this novel approach, which is impractical  
16 and would result in unnecessary proceedings in this Court.  
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19 Unlike normal domestic civil discovery, Section 1782 invests courts with an  
20 important gatekeeping function in deciding whether to issue subpoenas for purposes of  
21 foreign litigation. Indeed, the entire point of Abu Zubaydah's application is for the Court  
22 to decide whether the subpoenas should issue in the first instance. There is no basis for  
23 the Court to sidestep that question and issue the subpoenas as Abu Zubaydah requests,  
24 only to have the Government and Abu Zubaydah return to the Court again with motions  
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1 to quash or compel on the same legal points presently before the Court. Such an  
2 approach would be impractical and unnecessarily delay resolution of this matter.

3 In order to grant Abu Zubaydah's application, the Court must conclude that he  
4 has satisfied both the mandatory and discretionary requirements of Section 1782. *See*  
5 *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 260-65 (2004). The  
6 Government's statement of interest explains why Petitioner's application fails the  
7 discretionary portion of the analysis. That issue is now fully joined and the Court  
8 should decide the question based on the current posture and record.  
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11 In the alternative, Abu Zubaydah requests that the Court schedule a hearing on  
12 his Section 1782 application within 30 days. *See* ECF No. 20 at 2. The Government  
13 has no objection to the Court scheduling oral argument, whether in person or by  
14 telephone, at a time convenient for the Court should the Court conclude argument is  
15 warranted. Undersigned counsel respectfully requests that any argument be set for a  
16 date other than August 21-23, 28; September 7-8; October 4-6 and 24-27, due to prior  
17 scheduling conflicts.  
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1 Dated: August 18, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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